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May 1, 2003

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BY HAND

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-B204
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shawnee and Topeka, Kansas) – MB Docket No. 03-26J

Dear Ms. Dortch:

This letter is written on behalf of Allur-Kansas City, Inc. ("Allur") in connection with the proposed amendment of the FM Table of Allotments before the Media Bureau in the above-referenced proceeding. Allur understands that the comment deadlines established in this proceeding have passed; however, new information has emerged since the passage of the deadline that may bear on the appropriateness of the changes proposed in this docket. Given the fact that matters raised herein involve developments since the expiration of the pleading cycle, there is good reason for the Bureau to accept and consider this letter before issuing a Report and Order. Bureau evaluation of all relevant facts relating to an allotment proposal is in the public interest.

In the referenced docket, Cumulus Licensing Corporation ("Cumulus"), the licensee of KMAJ-FM, Topeka, Kansas, proposes to downgrade the station's allotment from 299C to 299C1 and to change its community of license from Topeka, Kansas to Shawnee, Kansas. The reference coordinates for the proposed allotment to Shawnee are 39° 09' 06" North Latitude and 95° 09' 28" West Longitude, a site near Tonganoxie in Leavenworth County, Kansas ("Tonganoxie site").

Significantly, the allotment proposal is not Cumulus's first effort to gain authority for a KMAJ facility at these coordinates. In January 2002, it amended a pending modification application for KMAJ (FCC File No. BPH-20000316ACF) to specify the Tonganoxie site for a modified facility to serve Topeka, the station's current community of license. However, because the predicted community coverage contour would not have provided city grade coverage to all of Topeka, Cumulus submitted a supplemental showing using the Longley-Rice method, relying on Section 73.313(e) of the Commission's Rules. Only when the Media Bureau determined that use of a supplemental coverage showing was inappropriate in this circumstance did Cumulus change

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its approach and file a Petition for Rule Making, seeking instead to change the station's community of license from Topeka to Shawnee, a community more than sixty miles away, and specifying the Tonganoxie site's location as the allotment reference coordinates.

Less than two weeks ago, one month after the comment deadline in this docket, Cumulus filed an Informal Objection to Allur's application to modify the license of Station KMJK(FM), Lexington, Missouri, by downgrading it from Class C to Class C1 on Channel 297 and relocating the transmitter site (FCC File No. BPH-20030324ADA). Although the KMJK application protects the second-adjacent-channel KMAJ facility at the reference coordinates provided in Cumulus's Petition, it does not protect the slightly short-spaced former facility of Station KBRZ(FM), Kansas City, Missouri, which has recently filed a license application for a downgraded and relocated Channel 243C0 facility (*see* FCC File No. BLH-20030422ABI). Cumulus asserted in its objection that "potential applicants seeking to serve the area formerly protected under KRBZ's Class C authorization" would be disadvantaged by the acceptance of KMJK's application before the downgraded KRBZ facility is licensed. Informal Objection, FCC File No. BPH-20030324ADA, at 2.

Cumulus's participation in the KMJK application proceeding, despite the fact that KMJK's proposal protects the reference coordinates for the Shawnee allotment, raises the possibility that Cumulus's real objectives in this docket are unrelated to providing service to Shawnee, but instead are motivated by a desire to maximize coverage to the already well-served Kansas City market. As the KMJK modification involves a change in transmitter location on the eastern side of Kansas City, and KMAJ currently serves Topeka and has advanced a Shawnee proposal that specifies site coordinates well to the west of Shawnee and Kansas City, the logical inference to be drawn from Cumulus's participation in the KMJK application proceeding is that its long-term objective is to locate its facility farther to the east, closer to Kansas City than the Tonganoxie site.

Accordingly, it would appear that careful scrutiny of Cumulus's Petition is warranted in this instance to confirm, among other things, that Shawnee, Kansas is sufficiently independent of the Kansas City Urbanized Area to warrant a first local service preference under the Commission's allotment priorities. *See Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). Although the Bureau notes in its Notice that "Petitioner contends that a *Tuck* analysis is not required because the proposal would move the station from one urbanized area to another," Cumulus's characterization of Commission precedent in this regard is inaccurate. *NPRM* at 5, *citing Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632 (Alloc. Br. 1996). *Compare* Petition at 3, *citing Boulder and Lafayette, Colorado*, 12 FCC Rcd 583 (Alloc. Br. 1997). In the case cited, the Allocations Branch did not determine that a *Tuck* showing was unnecessary when a move is proposed from one urbanized area to another, but that such a demonstration was not required where the increase in city grade coverage of the urbanized area toward which the station was moving was from very substantial (95%) to complete (100%). *See Boulder and Lafayette*,



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Colorado, 11 FCC Rcd at 3632-33 (¶ 4) (“move from the Boulder urbanized area to Lafayette, which is located between the Boulder and Denver urbanized areas”).

This is not the case here, where KMAJ currently does not provide any city grade coverage to Kansas City, but under the allotment proposal would cover 43.8% of Kansas City with its 70 dBu contour. *See NPRM* at 5. Indeed, Cumulus’s evident interest in locating its transmitter site even closer to Kansas City than the Tonganoxie site could result in an even greater degree of coverage of the city. Because Shawnee is indisputably within the Kansas City Urbanized Area, a full *Tuck* showing is required under Commission precedent. *See, e.g., Malvern and Bryant, Arkansas*, 14 FCC Rcd 3576, 3577 (¶ 4) (Alloc. Br. 1999) (requiring a full *Tuck* showing even where only a portion of the proposed community of license was within the relevant Little Rock Urbanized Area and the re-allotment would result in city grade service to less than 1% of the urbanized area). Cumulus has provided information in its Petition directed to the *Tuck* criteria, and the Bureau will need to review and analyze this showing carefully in reaching a determination whether or not to grant the allotment amendment that Cumulus seeks.

In addition, given the shifting sands upon which Cumulus has based its proposal – first as a Topeka station from the proposed Tonganoxie site, then as a Shawnee station from that same site, and now potentially as a Shawnee station from some as-yet undisclosed site (evidenced by its opposition to an application that protects the Shawnee allotment site) – the Bureau should seek additional information and assurances from Cumulus concerning its intentions for the station, including its specific plans to provide program service directed to the issues and concerns facing the Shawnee community. Under the circumstances here, Cumulus’s statement of intent to serve Shawnee cannot be accepted at face value. The Table of Allotments should not be amended without a thorough assessment of whether Cumulus’s stated intent reflects its actual intent.

Should there be any questions concerning this matter, please contact the undersigned counsel.

Respectfully submitted,

Howard A. Topel

David S. Keir

Counsel to Allur-Kansas City, Inc.

cc: Deborah A. Dupont, FCC
Mark N. Lipp, Counsel to Cumulus